In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1585

RUDOLPH IZZI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1–A8) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 1970. The petition for a writ of certiorari was filed on May 18, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether handwriting exemplars of a defendant were properly utilized in a criminal trial.

2. Whether the court erred in denying various motions for a continuance.

3. Whether the evidence was sufficient to sustain the conviction.

STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of the interstate transportation of stolen securities in violation of 18 U.S.C. 2314. On May 14, 1969, he was sentenced to eight years' imprisonment. The court of appeals affirmed (Pet. App. A).

1. Between July 13 and August 26, 1966, fifty 100-share certificates of the common stock of International Business Machines Corporation registered in the name of Hayden, Stone and Co., stockbrokers, disappeared from the firm's New York headquarters (Tr. 50–54, 68–69, 88–89; Govt. Ex. 4). On January 25, 1967, 26 of these stock certificates, still registered in the name of Hayden, Stone and Co., were delivered to an officer of an insurance company at a motel in Gettysburg, Pennsylvania, by a person who had registered at the motel as "R. Randolph" (Tr. 311–312). The stock was used by the insurance company as part of a recapitalization. It was first displayed to the State insurance commissioner and then placed in a safe deposit box in Harrisburg (Tr. 154–164, 346–348).

At the trial, the motel manager identified petitioner as the person who had registered at the Gettysburg motel as "R. Randolph" on January 25, 1967 (Tr. 176). Other witnesses identified a blond woman who accompanied "R. Randolph" as Joyce Cottone, a resident of Yorkville, New York. "R. Randolph" and his companion had arrived at the motel that morning in

a new Cadillac bearing New York license plates (Tr. 311–312). Earlier that same morning petitioner, accompanied by a blond woman, had been stopped for speeding on the Pennsylvania turnpike 40 miles from Gettysburg. Petitioner was driving a new Cadillac and had explained to the State trooper that he was in a hurry for an appointment at Gettysburg (Tr. 128–133).

On February 24, 1967, the 2,600 shares of IBM stock were seized by FBI agents pursuant to a search warrant (Tr. 372–373). One week later, on March 3, 1967, petitioner sold his three-month-old Cadillac (Tr. 487, 679–680) and disappeared. A warrant for petitioner's arrest was issued on March 8, 1967. Petitioner remained at large until May 3, 1968, when he surrendered himself to the authorities (Tr. 449–461, 487–507).

2. Prior to trial, the court granted the government's motion to require petitioner to execute handwriting exemplars. Thereafter, with defense counsel present, petitioner wrote his name on three cards, wrote "R. Randolph," the name on the motel register, on four cards and wrote the letters of the alphabet, numbers, months of the year and One Hundred Dollars and no Cents on four other cards (April 3 Tr. 56–57). At the trial a government handwriting expert, after examination of these cards and the signatures of petitioner as written on a tax return and on fingerprint cards, concluded that petitioner was the person who signed the name "R. Randolph" on the motel register (Tr. 467, 472–478).

ARGUMENT

1. Petitioner recognizes that this Court recently held in *Gilbert* v. *California*, 388 U.S. 263, 266, that the taking of handwriting exemplars does not violate the privilege against his self-incrimination.[1] His principal claim is that the government in its questioning of its own handwriting expert and a defense expert and in its summation did not simply use the exemplars for comparison with the questioned signature on the motel register but also employed the exemplars as an implied admission of guilt—by accusing petitioner of disguising his handwriting in the exemplars.

The record does not support this allegation. The government's expert merely explained that slower writing was responsible for the absence of a characteristic lift of the pen or pencil between certain letters on the requested exemplars (Tr. 475–476). In its cross-examination of the defense expert, and in its summation, the government sought to discredit testimony that differences between the exemplars and the questioned writing precluded a conclusion of common authorship by noting that differences between the exemplars written in the ordinary course of business and the exemplars written by request were explainable (Tr. 613–617, 722–724). As the court of appeals pointed out, "[i]f *Gilbert* is not to be rendered meaningless, the government must be allowed to explain differences between the exemplars and the signature sought to be identified, particularly where the

[1] Such exemplars were properly the subject of a pretrial order. *United States* v. *Doe*, 405 F. 2d 436 (C.A. 2). Cf. *United States* v. *Wade*, 388 U.S. 218.

defense points to these differences as evidence of non-common authorship" (Pet. App. A6).

2. Petitioner's contention that his various motions for a continuance were wrongfully denied is fully answered in Part II of the court of appeals' opinion (Pet. App. A6–A7). Significantly, petitioner does not claim that the handwriting expert witness for the defense considered himself in any way handicapped by a lack of adequate time to prepare his testimony.

3. The evidence was sufficient to establish petitioner's guilt. The unexplained disappearance of 5,000 shares of IBM stock from one of the largest brokerage firms in New York and the subsequent appearance of 2,000 of these shares to support the reorganization of an insurance company in Pennsylvania, in the circumstances here, warranted the conclusion that the stock had been knowingly transported from New York to Pennsylvania. As the court of appeals pointed out, the interstate transportation of the stock is additionally supported by the registration of petitioner's automobile, his direction of travel which indicates travel from New York to Gettysburg, and the New York residence of his companion. Petitioner's use of an assumed name in Gettysburg and his recent possession of stolen securities provided ample basis for the jury's inference that he had knowledge of the theft.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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